IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Arbitration Petition No. 197 of 2007

Neeshu Gupta ..Petitioner

vs.

Angel Capital and Debt Market
Limited and another ..Respondents

Mr.Jaydeep Mitra i/b Mr.T.N.Tripathi for petitioner.
Ms.J.M.Sidhwa i/b M/s HJayesh and Associates for respondents.

CORAM: S.C.DHARMADHIKARI J
14th September,2007

P.C.

1. This is a petition under section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award made by the Arbitrator appointed by the National Stock Exchange of India (NSE for short) upon a claim made by the first respondent.

2. The award dated 5th February, 2007 directs payment of Rs.5,80,787.97 together with interest at the rate of 8% p.a. from 12th April, 2006.

3. The petitioner claims to be a student studying in Engineering. His case is that on or about 22nd March, 2006 he opened the Account bearing No. N 4282 with sister concern of the first respondent

M/s Angel Broking Ltd. which is a registered broker and trading member with the Bombay Stock Exchange for trading in shares and securities listed at B.S.E. It is his case that he only transacted for a period of 16 days during 22nd March, 2006 and 7th April, 2006. However, the first respondent got the signatures of the petitioner on certain Account opening form for N.S.E. capital/cash segment transactions. N.S.E. account was opened for a specific segment transaction to deal with specific securities which are not listed with B.S.E. The case of the petitioner is that he is interested only in dealing in shares and securities listed at B.S.E. and account with the N.S.E. was opened in exceptional circumstances. In any case the petitioner never had any transactions in N.S.E. cash account.

4. It is the case of the petitioner that he purchased certain stocks resulting in debit in the B.S.E. account and on the request of the sister concern of the first respondent, he issued and delivered to the said company the post dated cheque of Rs.2,00,000/- payable on 20th April, 2006. It was his case that he had decided to settle the account finally by selling certain securities. Accordingly, he sold various securities resulting

into liquidation of debits and generating certain credits into the said B.S.E.account. Since nothing was due and payable, he stopped payment, according to him, by instructing the bankers.

5. On 14th April, 2006, the petitioner received a letter dated 7th April, 2006 from the first respondent demanding the alleged penalty of Rs.637.48 for shortage of amount of Rs.6,37,479.30 in alleged Future and Options (F&O) Account as on 31st March, 2006. The case of the petitioner is that he had never opened any such account. There has been no transaction of any nature whatsoever between the petitioner and the respondents in any alleged F&O account. Since he had never paid any margin money, the question of shortage of any margin amount or consequences of penalty would not arise.

6. That is how, the petitioner replied and sought return of the post dated cheque. The case of the first respondent was that this stand is not correct because the account was opened and the orders were executed on telephonic instructions of the petitioner. In such circumstances and when the amounts are unpaid the claim was lodged by the first respondent.

7. In the reply to the claim which was filed on 3rd October, 2006, after prolonged correspondence on the issue, the petitioner contended that he had not placed any order in F/O segment of NSE as he was not having any registration, initial margin and awareness in F&O segment. However, in the reply, the copy of which is at page 21 of the compilation handed in, the petitioner states thus:

> "I had not received any contract notes, bills and copy of ledger as attached to the arbitration application (Exhibit A and B) On dated 14.4.2006, I had received one letter dated 7.4.2006 from applicant M/s Angel Capital and Debts Market Ltd. intimating me a debit note of Rs.637.48 as penalty charges for F&O margin shortage. It was shocking and surprising to me and I had immediately informed the facts to the Company vide Registered letter dated 14.4.2006.
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> 3. As I was newly registered client, I was doing transactions in BSE only. I was not having initial margin with applicant M/s Angel Capital and Debts Market Ltd. it is surprising how an account can be turned into

debit without any transactions. It seems that it is a matter of serious violation of exchange rules and regulatory authorities guide-lines.

Further it is learnt that heavy forged transactions (App.15-20 crores turnover) had been done in new account within 8 trading sessions and without initial margin. Contact notes, bills and ledger extract were not sent to me intentionally. Kindly ask for all contract notes and bills from Trading Member to find out the truth.

4. Here, I wish to mention that I have been allotted 180 shares of ICICI Bank and 162 shares of Bank of Baroda in IPO and the same were sold by me in BSE segment to M/s Angel Broking Ltd. Sold securities were transferred from my demat account to (CM-BP-Id IN 606125, CM- Angel Broking Ltd., Market Type - Rolling, settlement No.-0506246, Execution Date: 23.03.2006) within stipulated period and certain shares were purchased against the proceeds. As per contract notes and bills issued by M</s Angel Broking Ltd., Rs.122685.95 and 1000

> shares of CG Igarshi is outstanding as payout. I had written various letters to release the payout but they are not responding and violating the exchange rules and harassing me."

8. The petitioner also responded to the communication from the Exchange and filed his submissions in which it is contended that the applicant’s registration form submitted by respondent no.1 is not valid document. He has not signed on every page of the Member client Agreement. There are material alterations. The transactions have been carried out in the name of the first respondent without agreement and margin requirements. However, in so far as the payment made by him, in this reply,the petitioner does not say anything and claims instead a sum of Rs.3,03,472.91 from the respondent no.1.

9. The Arbitrator heard both sides and considered their contentions so also various documents and made the subject award.

10. The learned Counsel appearing for the petitioner submits that the award is liable to be quashed and set aside on the ground that a fraud

has been perpetrated by the first respondent. The Arbitrator had before him the claim by the first respondent whereas the cheque was forwarded to Angel Broking Limited, which is the sister concern of the first respondent. The Arbitrator had no jurisdiction in as much as the petitioner had not opened any F&O account or placed any order or had any transaction in NSE account. Further the specific objections and counter claim raised including the plea that the entire claim as made is contrary to NSE Rules and Regulations, have been brushed aside and a cryptic award has been made.

11. On the other hand, the learned Counsel appearing for the respondent no.1 states that the petitioner had signed below every signature accompaniment to the member client agreement. He had disclosed full details. He had also been aware of the terms and conditions including the appropriation and adjustment of the amounts. He was forwarded all details including ledger statement. In such circumstances, there is no substance in the contention that M/s Angel Broking Limited could have made any claim and not the first respondent.

12. With the assistance of the learned Advocates

appearing for both sides, I have perused the subject award. The subject award proceeds on the basis that the Arbitrator appointed by National Stock Exchange had gone through the entire material. He has referred to the case of the first respondent and reply of the petitioner thereto. The arguments before him proceed on the basis that the petitioner's trading account was in F&O segment. The award proceeds to consider the rival contentions including that the petitioner forwarded the cheque of Rs.2,00,000/- covering Angel Broking Ltd. and not the first respondent. The cheque was forwarded although there was no short fall in the account of the petitioner with the said Broking Limited Company. Thereafter the cheque was not honoured because of stop payment instructions were issued.

13. All written submissions and counter claims have been considered and ultimately in the Award the Arbitrator has held that all the issues raised did not have any bearing on the liability of the first respondent. The petitioner was not required to forward any cheque and his act of forwarding the cheque of Rs.2,00,000/- despite there being no debit balance in the concerned account has been made the basis of the Award and that is how the

petitioner was directed to pay the sums. The entire transaction has been seen in the backdrop of the trading in the National Stock Exchange, its rules and regulations and the Arbitrator has observed thus:

> "The applicants Arbitration application dated October 3, 2006 was received by NSE on October 5, 2006 which is within six months of the last transaction on April 7, 2006 and, therefore, not barred by limitation as prescribed under the Byelaws Rules and Regulations of NSEIL.
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> The respondent has been presenting a host of peripherial issues to disown the F&O trades and these were found not to have any material bearing on the contractual liability.
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> There was no apparent need for issuance of a cheque of Rs. 2 lacs in the name of Angel Broking Ltd. as there was no debit balance in the respondent’s account. Having started dealing with the applicant on March 22, 2006, there was no pressing requirement for issuing a postdated cheque of Rs.2 lacs on

> March 24, 2006 albeit in the name of their sister concern. This could only be for providing margins on F&O trading and covering mark to market losses with the applicant. I, therefore, hold that the claim is maintainable and the reference is allowed."

The act of issuance of cheque is nothing but providing margin of F&O Trading and covering the market loss. It is not as if the petitioner is stranger to the Stock Exchange and dealings in Securities. It is, therefore, that he has signed the documents and that is not disputed. It is further clear that having received the demand notice, if there was no liability so also no privity of contract, the petitioner would have raised that issue at the earliest and adopted appropriate proceedings. His continued silence and thereafter forwarding the cheque is something which has been rightly held against him by the learned Arbitrator. All the contentions of Mr.Mitra are in the nature of calling upon this Court to appreciate and appraise the material before the Arbitral Tribunal once again. No particulars of any fraud much less any illegality or fabrication have been brought before the Court or the Tribunal. Merely

relying upon some correspondence so also some discrepancies in the form would not be enough to prove the case as alleged in this petition. The claim and counter claim having been considered by the sole Arbitrator appointed by Exchange within the frame work of the Rules and Regulations so also applicable practice I see no reason to interfere with the subject award. Arbitration Petition is, therefore, dismissed. No costs.

(S.C.DHARMADHIKARI J.)